

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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PATRICIA DeSANTIS,
individually and as Successor
in Interest for RICHARD
DeSANTIS, deceased, and as
Guardian Ad Litem for DANI
DeSANTIS, a minor and TIMOTHY
FARRELL, a minor,

Plaintiffs,

vs.

No. C-07 3386 JSW

CITY OF SANTA ROSA, JERRY
SOARES, RICH CELLI, TRAVIS
MENKE, PATRICIA MANN, and DOES
1 through 25, inclusive,

Defendants.

DEPOSITION OF OFFICER JERRY ELLSWORTH

July 24, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755



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1 A. 3:00 or 4:00 in the morning, I think.

2 Q. And were you riding alone, or did you have
3 a partner that night?

4 A. Alone.

5 Q. When you responded to the scene, what was
6 the first thing you saw?

7 A. As I was pulling up, or as I exited my
8 car, or. . .

9 Q. As you were pulling up.

10 A. Houses.

11 Q. Okay. Did you see any other patrol cars?

12 A. No, I was the first one there.

13 Q. And what information did you have at the
14 time you arrived?

15 A. Just what Dispatch had told me.

16 Q. And what was that?

17 A. That there was a male and a female in what
18 appeared to be some type of an altercation.

19 There were shots being fired.

20 Mr. DeSantis was shooting his firearm
21 into the ceiling, because he thought that somebody
22 was up there who was trying to get him or, you know,
23 hurt his family in the attic.

24 Q. Okay. And did you have information
25 regarding mental illness?

1 MR. SCOTT: Q. So, you got out of your
2 car, you had Duke on a leash, and you started
3 approaching the residence; is that correct?

4 A. Yes.

5 Q. And did you go all the way up to the front
6 door?

7 A. No.

8 Q. How far did you get?

9 A. To the end of the driveway.

10 Q. And then what did you do?

11 A. We were -- As other people started showing
12 up, we were all taking about the best position of cover
13 that we could.

14 And I observed Mr. DeSantis, and I believe
15 his wife, in their front porch, or the "landing," if
16 you will, in front of their duplex.

17 Q. Okay. Are you familiar with the term
18 "Staging"?

19 A. Yes.

20 Q. And what does that term mean to you?

21 A. Well, it could mean a variety of things
22 but, generally speaking, it would be for everybody to
23 get together and approach something as a group, if you
24 will, as opposed to one Officer at a time.

25 Q. Okay. Have you had training in relation

1 Sergeant basically talked about what his thoughts and
2 ideas were and what his plan was, and we went to the
3 party.

4 Q. Okay. And did you follow his plan?

5 A. Yeah. He -- They took charge of it, so...

6 Q. Okay. So, there was a plan, and it was
7 implemented?

8 A. No.

9 Q. Okay. So, there was a plan, and it was
10 not implemented.

11 A. Based on the party-go-ers' reaction, no,
12 it didn't -- it wasn't implemented.

13 Q. All right. So, it didn't get violent, I
14 take it?

15 A. No.

16 Q. That's correct: It did not get violent?

17 A. Correct.

18 Q. Okay. So, when you arrived at the
19 vicinity of the DeSantis residence, how many Officers
20 did you see there at any time?

21 A. When I arrived, or at any time?

22 Q. Prior to the shooting, how many Officers
23 did you see there?

24 A. Five.

25 Q. And who were they?

1 A. Patricia Mann, Travis Menke, myself,
2 Sergeant Soares, and Sergeant Celli.

3 Q. You didn't see Officer Jones?

4 A. No.

5 Q. Did you ever see Officer Jones there?

6 A. No.

7 Q. Okay. And when did you see Officer
8 Potter?

9 A. At -- After the shooting had occurred.

10 Q. All right.

11 Did you see Officer Jones after the
12 shooting occurred?

13 A. I don't recall.

14 Q. Approximately how much time passed from
15 when you first arrived until when the first shot was
16 fired?

17 A. A minute or two. Couple minutes.

18 Q. Okay. And during that minute or two, the
19 other Officers you mentioned, do you recall when they
20 arrived in relation to when you arrived?

21 A. The only person I know is Travis Menke
22 showed up literally seconds behind me. In terms of how
23 everybody else fell in, I don't know.

24 Q. Okay. And was this -- Were shots being
25 fired when you arrived?

1 A. Dispatch had just put it out, yes, as I
2 was parking.

3 Q. Did you hear the shots?

4 A. Yes.

5 Q. Okay. And did you hear shots after you
6 got out of your car?

7 A. No.

8 Q. When -- How much time passed until you
9 first saw Officer Mann from the time you arrived?

10 A. Not much.

11 Q. Okay. And was it shortly thereafter that
12 you saw Sergeant Celli?

13 A. I don't know if it was after or before.

14 Q. About the same time?

15 A. (Nodding head.)

16 Q. That's a "yes"?

17 A. Yes.

18 Q. And did you see Sergeant Soares there
19 about the same time?

20 A. Yes.

21 Q. So it would be fair to say that you,
22 Officer Mann, Officer Menke, Sergeant Celli and
23 Sergeant Soares were there for over a minute before
24 shots were fired.

25 A. Yeah.

1 Q. Why?

2 A. Because he's the person that we were
3 dealing with.

4 Q. Did you ever see Richard DeSantis down on
5 the ground on his knees?

6 A. Yes.

7 Q. For how long did you see him on his knees?

8 A. Couple of seconds.

9 Q. Okay. And how long did you see him on the
10 ground?

11 A. A couple of seconds.

12 Q. Okay. And when he got up from the ground,
13 what did you see him do?

14 A. Which time?

15 Q. The first time.

16 A. I believe he came back -- If I remember
17 correctly, he came back to his knees, and then went
18 back down again.

19 Q. How long was he on his knees?

20 A. A couple seconds.

21 Q. And then what did he do?

22 A. Went almost -- almost back to like what
23 I'm going to call a prone position, which would be
24 laying down.

25 Q. Okay. Did you consider releasing Duke at

1 that point?

2 A. No.

3 Q. Why not?

4 A. He was complying.

5 Q. Okay. When did he stop complying?

6 A. When he immediately charged after us;

7 charged at us, I should say.

8 Q. Okay. And how far away from you was he
9 when he did that?

10 A. Approximately 30 feet.

11 Q. And at that time did you consider
12 releasing Duke?

13 A. No.

14 Q. Why not?

15 A. It was too close.

16 Q. What do you mean, "too close"?

17 A. Well, he was coming right at the three of
18 us, Officer Mann, Officer Menke and myself.

19 Both Officer Mann and Menke were in my
20 peripheral vision to the left --

21 Q. Huh-huh.

22 A. -- and they had their firearms fully
23 extended --

24 Q. Right?

25 A. -- and he was going right at them.

1 Q. Did you hear the Sage fired?

2 A. Yes.

3 Q. And did you recognize it as a Sage when
4 you heard it?

5 A. Yes.

6 Q. And were you able to tell where the Sage
7 was coming from, the direction?

8 A. To my right; I knew that.

9 Q. Did you see a muzzle flash?

10 A. No.

11 Q. Did you see Mr. DeSantis react, or did it
12 appear to you that he reacted to a Sage round?

13 A. His body had a slight kind-of like almost
14 as if he had bumped into something; nothing beyond
15 that.

16 Q. What do you mean, "bumped into something"?

17 A. Like it -- You know, body twisted maybe
18 10 degrees. It was just real slight.

19 It almost looked like he had bumped into
20 something as he was running.

21 Q. Did he slow down at all?

22 A. No.

23 Q. And would it be fair to say he was
24 sprinting?

25 A. Yes.

1 Q. And were his hands at his sides pumping
2 like a sprinter?

3 A. I don't recall.

4 Q. You don't recall where his hands were when
5 he was running?

6 A. No.

7 Q. You weren't looking at his hands?

8 A. I was looking at him, it was very dark,
9 but I can't say that I specifically remember seeing his
10 hands go like this, if that's what you are asking me.

11 Q. Okay. And were you looking at his hands?

12 A. Yeah, I was looking at him.

13 Q. Well, were you looking for a weapon?

14 A. Yeah.

15 Q. Okay. And is one of the first places you
16 were looking, at his hands, to see if he had a weapon
17 in one of his hands?

18 A. Mm-hmm.

19 Q. "Yes"?

20 A. Yes.

21 Q. Okay. Because you knew shots had been
22 fired, correct?

23 A. Yes.

24 Q. And you knew there was a possibility he
25 had a gun on him, right?

1 A. Yes.

2 Q. And in order for him to use that gun, he
3 would probably have to have it in front of one of his
4 hands to fire it, right?

5 A. Correct.

6 Q. So, you were looking at his hands, to see
7 if he had a gun in either one of his hands, right?

8 A. Yes. Not looking at his hands, his entire
9 body, his facial expressions, his movement. . .

10 Q. Did you ever see a gun in his hands?

11 A. No.

12 Q. Did you ever see a gun on his person?

13 A. No.

14 Q. Did you ever see him reach for a gun?

15 A. No.

16 Q. What was he wearing?

17 A. Jeans.

18 Q. Anything else?

19 A. No.

20 Q. Was he barefoot?

21 A. I believe so.

22 Q. Did you hear him say anything at any time?

23 A. No.

24 Q. Did you ever hear the woman in the house,
25 the woman who turned out to be his wife, Patricia

1 Q. Okay. Were you afraid he was going to
2 kill you with your own gun?

3 A. Possibly.

4 Q. Why?

5 A. Because he was coming at us, charging at
6 us, when you got two Officers who have got their guns
7 extended at this person.

8 Q. So, you were afraid Richard DeSantis was
9 going to come and take your gun away from you, and kill
10 you with your own gun.

11 A. I didn't say me.

12 He was coming at us. It's unsure who he
13 was -- He was coming in our direction.

14 Q. We're just talking about you right now --

15 A. Or that he had a firearm in his pocket.

16 Q. That you didn't see.

17 A. Correct.

18 Q. All right. Why didn't you shoot him?

19 A. My gun was holstered.

20 Q. Why was your gun holstered?

21 A. Because at the time I didn't have a
22 flashlight on my gun, so I couldn't hold my dog, my
23 flashlight and my gun all at the same time.

24 Q. Okay.

25 A. So, I -- when I was there, I noticed that

1 other people had their guns out; so, I wanted to be
2 free, and have the ability to utilize the dog, if I
3 could. So, I had my gun in my holster, flashlight in
4 one hand, Duke in the other.

5 Q. Okay. Did you have the flashlight pointed
6 in the direction of Mr. DeSantis?

7 A. Yes.

8 Q. Why?

9 A. So we could see him. It was a real dark
10 driveway.

11 Q. Was the Sage the first shot you heard
12 fired?

13 A. Yes.

14 Q. And how much time passed from that Sage
15 round being fired to the next shot you heard?

16 A. Approximately a couple seconds.

17 Q. And what did Mr. DeSantis do in those
18 couple of seconds?

19 A. Continued advancing.

20 Q. Did you ever see him reach for his side?

21 A. No.

22 Q. Did it appear to you that the Sage caused
23 him to slow down at all?

24 A. No.

25 Q. Were you expecting another Sage shot?

1 A. He was -- He was basically focusing in one
2 particular area --

3 Q. Okay.

4 A. -- not, you know, over here and over
5 there, it was a focus on a particular area.

6 Q. And you said, "He was in a dazed or
7 confused state" at the of bottom of page 30.

8 What did you mean by that?

9 A. Well, he just looked like he was --
10 I mean, he just had like kind of a blank
11 look on his face a lot of the times, looking at --
12 almost like, you know, if you were to speak to
13 somebody in a foreign language, they don't -- you
14 know, they kind of just have this blank stare at you,
15 like. . .

16 Q. Now, did you refer to him as "Raging
17 Bull"?

18 A. Yes.

19 Q. What did you mean by that?

20 A. I just was -- He was -- When he was in his
21 prone position, if you will, laying down on the
22 ground --

23 Q. Mm-hmm?

24 A. -- he was up and running and coming
25 straight at us before he was anywhere near vertical.

1 It was like he was in a sprinter's box,
2 and he just had this -- like his face was red, his
3 teeth were gritted, and he was just like a raging
4 bull, just coming right at us.

5 Q. Okay. You weren't referring to the movie
6 "Raging Bull" the boxer, you are talking about the --

7 A. I've never seen the movie, no.

8 Q. Okay. So you weren't trying to suggest
9 that he was acting like a boxer, he was more like an
10 animal who was kind of head down, running.

11 A. Correct.

12 Q. Okay. Have you ever been to a bullfight?

13 A. Have I ever been to one?

14 Q. Yeah.

15 A. No.

16 Q. Okay. The second shot that you heard
17 after the Sage, did it sound to you like it came from a
18 rifle?

19 A. Well, I can't say. I don't know.

20 Q. Could you tell where the second shot came
21 from?

22 A. No.

23 Q. Did it appear to you that the second shot
24 hit Mr. DeSantis?

25 A. I don't know. They were all pretty quick,

1 one after another. I don't know which one -- which one
2 actually made him fall to the ground, I don't know.

3 Q. Are you familiar with the term
4 "sympathetic gunfire"?

5 A. Yes.

6 Q. And what does that term mean to you?

7 A. It means that if -- one may not have
8 intentions of shooting, but because somebody else is,
9 they are helping.

10 Q. Are you trained not to fire, if an
11 innocent person is in the line-of-fire?

12 MS. FOWLER: Again, I'm going to object as
13 an incomplete hypothetical, but go ahead.

14 MR. SCOTT: Q. Based on your training in
15 use of lethal force, are you trained not to fire, if
16 there is a risk that instead of hitting the person you
17 are aiming for, you could hit an innocent bystander?

18 A. It's something you need to be cognizant
19 of, and be aware of.

20 Q. Okay. And it's --

21 A. Depending on the scenario and the
22 circumstances, it may or may not. It would obviously
23 depend on whether you opted to shoot or not.

24 Q. So you understand, based on your training,
25 you have discretion to shoot or not shoot, when there

STATE OF CALIFORNIA) ss.
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CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 30th day of July, 2008.

A. Maggi Saunders CSR

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